

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

RUSHAWN SMITH

PLAINTIFF

v.

Case No. 3:09-cv-00668-DPJ-FKB

KOCH FOODS OF MISSISSIPPI, LLC

DEFENDANT

DEFENDANT’S MOTION FOR SUMMARY JUDGMENT

Pursuant to Federal Rule of Civil Procedure 56, Defendant Koch Foods of Mississippi, LLC (“Koch Foods”) moves for summary judgment on the claims asserted in Plaintiff Rushawn Smith’s Complaint. In support of its motion, Koch Foods states the following:

1. On August 25, 2009, Plaintiff filed a five-count Complaint against her former employer Koch Foods alleging: sex discrimination and harassment in violation of Title VII (Count I); race discrimination in violation of Title VII and Section 1981 (Count II); retaliation in violation of Title VII and Section 1981 (Count III); national origin discrimination in violation of Title VII and Section 1981 (Count IV); intentional infliction of emotional distress (Count V); and punitive damages (Count VI).

2. Counts II and IV of the Complaint are based on Plaintiff’s allegations that she was denied promotion because of her race and national origin. Since Plaintiff has no direct evidence of discrimination and cannot establish a prima facie case of discrimination, the Court should grant summary judgment on these claims.

3. Count I of the Complaint is based on Plaintiff’s allegations that Night Shift Manager Larry Webster sexually harassed her. Plaintiff’s allegations, if true, do not establish a claim of sexual harassment in violation of Title VII. Therefore the Court should grant summary judgment this claim.

4. Count IV of the Complaint alleges that Koch Foods retaliated against Plaintiff for making complaints about discrimination and harassment. Since Plaintiff cannot establish a causal connection between her alleged complaints and her adverse employment actions, her retaliation claim fails as a matter of law.

5. Count VI is not an independent claim, but rather a demand for punitive damages based on allegations asserted in Counts I through IV. Because Plaintiff cannot sustain a claim of discrimination, harassment or retaliation, she is not entitled to punitive damages under any federal or state law.

6. Plaintiff has voluntarily withdrawn her state law claim for intentional infliction of emotional distress.

7. In support of this motion, Koch Foods attaches the following exhibits:

- a. **Exhibit A.** Transcript of Deposition of Rushawn Smith
- b. **Exhibit B.** Affidavit of Kay Crawford
- c. **Exhibit C.** Koch Foods Employee Orientation and Safety & Health Violations Disciplinary Guidelines
- d. **Exhibit D.** Collective Bargaining Agreement
- e. **Exhibit E.** Koch Foods Job Posting (Nov. 27, 2007)
- f. **Exhibit F.** Koch Foods Job Posting (Jan. 31, 2008)
- g. **Exhibit G.** Koch Foods Job Posting (May 1, 2008)
- h. **Exhibit H.** Employee Notice of Denial of Position (Feb 5, 2008)
- i. **Exhibit I.** Employee Notice of Denial of Position (May 6, 2008)
- j. **Exhibit J.** Plaintiff's Responses to Defendant's First Set of Interrogatories
- k. **Exhibit K.** Employee Performance Notice
- l. **Exhibit L.** Plaintiff's Corrections to Rushawn Smith's Deposition

8. Koch Foods has also filed a memorandum in support of this motion.

WHEREFORE, for the reasons set forth above and in its supporting Memorandum of Law, Defendant respectfully requests that this Court dismiss the Complaint with prejudice.

Respectfully submitted,

By: s/ Abizer Zanzi
One of the Attorneys for Defendant

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September 15, 2010

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he caused a true and correct copy of the foregoing **DEFENDANT’S MOTION FOR SUMMARY JUDGMENT** to be served on the attorneys of record listed below by filing the foregoing electronically using the CM/ECF filing system on this 15th day of September, 2010:

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